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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 FEB 18 P 4: 10

Arizona Corporation Commission

DOCKETED

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

FEB 18 2009

DOCKETED BY

MP

In the matter of:

DOCKET NO. S-20654A-09-0068

STEVE JOHN ROGAN, a married man,

TEMPORARY ORDER TO CEASE AND
DESIST AND NOTICE OF
OPPORTUNITY FOR HEARING

CAROL ANN RICHEY, a married woman,

DEM BONZ BARBECUE RESTAURANTS,
L.L.C., an Arizona limited liability company,

PIAZZ, L.L.C., an Arizona limited liability
company,

Respondents.

NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY

EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents STEVE JOHN ROGAN, CAROL ANN RICHEY, DEM BONZ BARBECUE RESTAURANTS, L.L.C. and PIAZZ, L.L.C. are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

The Division further alleges CAROL ANN RICHEY as a person controlling DEM BONZ BARBECUE RESTAURANTS, L.L.C. through PIAZZ, L.L.C. within the meaning of A.R.S. § 44-1999, so that she is jointly and severally liable under A.R.S. § 44-1999 to the same extent as DEM BONZ BARBECUE RESTAURANTS, L.L.C. AND PIAZZ, L.L.C. for violations of the Securities Act.

1 The Division further alleges as follows:

2 **I. JURISDICTION**

3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
4 Arizona Constitution and the Securities Act.

5 **II. RESPONDENTS**

6 2. STEVE JOHN ROGAN is an individual who, at all times relevant hereto, resided in
7 Maricopa County, Arizona.

8 3. CAROL ANN RICHEY is an individual who, at all times relevant hereto, resided in
9 Maricopa County, Arizona.

10 4. STEVE JOHN ROGAN and CAROL ANN RICHEY are husband and wife. At all
11 times relevant, STEVE JOHN ROGAN ("ROGAN") and CAROL ANN RICHEY ("RICHEY")
12 have been acting for their own benefit and for the benefit or in furtherance of their marital
13 community.

14 5. DEM BONZ BARBECUE RESTAURANTS, L.L.C. ("DEM BONZ") is an Arizona
15 limited liability company formed on or about June 27, 2008. Until January 27, 2009, ROGAN and
16 RICHEY were the only members of DEM BONZ. DEM BONZ maintains an address of 8912 E.
17 Pinnacle Peak Rd. #174, Scottsdale, Arizona 85255.

18 6. On January 27, 2009, articles of amendment executed by RICHEY were filed with
19 the Arizona Corporation Commission for DEM BONZ. According to the articles of amendment,
20 effective January 21, 2009, ROGAN and RICHEY were replaced as limited liability members of
21 DEM BONZ with PIZAZZ, L.L.C.

22 7. PIZAZZ, L.L.C. ("PIAZZ") is an Arizona limited liability company formed on or
23 about December 4, 2008. RICHEY is identified as the statutory agent and sole member of PIZAZZ
24 with an address of 8912 E. Pinnacle Peak Rd. #174, Scottsdale, Arizona 85255.

25 8. At all times relevant, ROGAN conducted business through DEM BONZ and
26 represented himself to be a co-owner and co-founder of DEM BONZ.

1 9. ROGAN, DEM BONZ and PIZAZZ may be referred to collectively as
2 "Respondents."

3 **III. FACTS**

4 10. ROGAN was registered as a securities salesperson with PFS Investment, Inc. in
5 California beginning February 10, 1986; in Colorado beginning December 6, 1993; in Illinois
6 beginning November 29, 1989; and in Ohio beginning February 21, 1986. The Illinois registration
7 termed on December 31, 1990. All other registrations termed on June 4, 1999.

8 11. Respondents have been and are directly offering securities in the form of promissory
9 notes and/or investment contracts since at least January 22, 2009.

10 12. At all times material hereto, Respondents have not been registered as dealers or
11 salesmen.

12 13. ROGAN has been and continues to solicit potential Arizona investors through
13 advertisements placed on an internet website known as Craig's List/Phoenix ("Craig's List").

14 14. One such advertisement posted by ROGAN on Craig's List on January 22, 2009
15 stated:

16 **FLAGSHIP FRANCHISE INVESTOR NEEDED,**
17 **48% ROI!!!! (Scottsdale)**

18 15. The advertisement sets forth that Respondents are looking for an investor to provide
19 \$85,000 in initial operating capital and reserves for a restaurant, DEM BONZ, to be located in
20 Scottsdale. The ad further represents that, "We have invested over \$150,000 to get to this point."

21 16. The advertisement directs prospective investors to respond to an e-mail address at
22 dembonzbbq@gmail.com or go to www.dembonzbbq.com where prospective investors can request
23 a copy of the business plan for DEM BONZ.

24 17. After seeing the advertisement, at least one potential Arizona investor ("PAI")
25 responded by sending an e-mail to the address provided. Shortly thereafter, the PAI received an e-
26 mail reply from ROGAN that attached a copy of the business plan.

1 18. ROGAN's e-mail reply to the PAI stated that the "buildout" was already complete
2 and that his experience and commitment would be the "security" in the investment.

3 19. ROGAN's e-mail reply to the PAI indicated that he still had an opening for an
4 "additional" investor.

5 20. The business plan refers to the location for DEM BONZ as Frank Lloyd Wright and
6 100th Street in Scottsdale. The address for the purported location of DEM BONZ is 14144 N. 100th
7 Street in Scottsdale.

8 21. The business plan sets forth that the founders, ROGAN and RICHEY, have invested
9 over \$150,000 to date in the venture. The amount alleged to have been expended is itemized in the
10 business plan under a category titled "Initial Capitalization." The amounts included under the
11 initial capitalization category include: \$116,500 for "buildout" expenditures related to such things
12 as framing, drywall, electric, plumbing, grease trap, flooring, painting, counters, cabinets and gas
13 piping; \$18,300 for equipment and fixtures expenditures; and \$19,500 for administrative and
14 technical expenditures.

15 22. The business plan identifies key personnel as being ROGAN – founder/chef,
16 RICHEY – cofounder/director of marketing and Ralph Richey, MBA – financial controller.

17 23. On February 2, 2009, in an attempt to gather additional information about the
18 investment, the PAI placed a call to the number provided by ROGAN in his e-mail to the PAI. The
19 person answering the call confirmed that he was ROGAN. ROGAN informed the PAI that he was
20 opening one restaurant that he referred to as the "flagship" and that he was looking at the
21 possibility of at least one other location in Tempe.

22 24. ROGAN also informed the PAI that he expected to be able to open the Scottsdale
23 location within 2-4 weeks of receiving the \$85,000.

24 25. ROGAN further represented to the PAI that he could expect to begin receiving a
25 payout within one month after opening and should receive a 100% return on the investment within
26 four years of making the \$85,000 initial investment.

1 26. ROGAN assured the PAI that if the PAI invested, any additional investors who
2 might want to invest would have to wait until ROGAN opened another location before they could
3 invest.

4 27. ROGAN explained to the PAI that the PAI's role would be that of a passive
5 investor.

6 28. ROGAN confirmed to the PAI that ROGAN had invested over \$150,000 to build
7 out the DEM BONZ location at 14144 N. 100th St., Suite B-130, Scottsdale, AZ 85260.

8 29. Upon information and belief, Respondents have not leased or performed any work
9 to "buildout" the location at 14144 N. 100th St., Suite B-130, Scottsdale, AZ 85260.

10 30. ROGAN assured the PAI that any investment would be documented with a contract
11 and/or promissory note.

12 31. On February 9, 2009, the PAI received via e-mail a promissory note setting forth
13 some of the terms and conditions for the proposed investment. According to the note, the PAI
14 would be paid interest on the amount invested at the rate of 15% per annum. As additional
15 consideration for the investment, DEM BONZ, through its managing member identified in the
16 promissory note as RICHEY, agrees to pay the investor 15% percent of the after tax net profits
17 from the operation of DEM BONZ. RICHEY and ROGAN are identified as guarantors of the note.

18 32. ROGAN failed to disclose to the PAI that he was no longer a limited liability
19 member of DEM BONZ and that RICHEY was no longer the managing member of DEM BONZ.

20 **IV. VIOLATION OF A.R.S. § 44-1841**

21 **(Offer and Sale of Unregistered Securities)**

22 33. From at least January 22, 2009, Respondents have been offering or selling securities
23 in the form of promissory notes and/or investment contracts, within or from Arizona.

24 34. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
25 Securities Act.

26 35. This conduct violates A.R.S. § 44-1841.

V. VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

36. Respondents are offering or selling securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

37. This conduct violates A.R.S. § 44-1842.

VI. VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

38. In connection with the offer or sale of securities within or from Arizona, Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii) making untrue statements of material fact or omitting to state material facts that are necessary in order to make the statements made not misleading in light of the circumstances under which they are made; or (iii) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Misrepresenting that the founders, ROGAN and RICHEY, of DEM BONZ had invested over \$150,000 to build out a business location at 14144 N. 100th St., Suite B-130, Scottsdale, AZ 85260; and

b) Failing to disclose that as of January 27, 2009, ROGAN and RICHEY were no longer limited liability members of DEM BONZ; and

c) Misrepresenting that the PAI would make substantial profits by investing in the restaurant business to be operated by Respondents.

39. This conduct violates A.R.S. § 44-1991.

40. RICHEY directly or indirectly controlled DEM BONZ through PIZAZZ within the meaning of A.R.S. § 44-1999. Therefore, RICHEY is liable to the same extent as DEM BONZ and PIZAZZ for its violations of A.R.S. § 44-1991.

1 **VII. TEMPORARY ORDER**

2 **Cease and Desist from Violating the Securities Act [or IM Act]**

3 THEREFORE, based on the above allegations, and because the Commission has determined
4 that the public welfare requires immediate action,

5 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that
6 Respondents, RICHEY and their agents, servants, employees, successors, assigns, and those persons
7 in active concert or participation with Respondents and/or RICHEY CEASE AND DESIST from
8 any violations of the Securities Act.

9 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in
10 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

11 IT IS FURTHER ORDERED that this Order shall be effective immediately.

12 **VIII. REQUESTED RELIEF**

13 The Division requests that the Commission grant the following relief:

14 1. Order Respondents and RICHEY to permanently cease and desist from violating the
15 Securities Act, pursuant to A.R.S. § 44-2032; and

16 2. Order Respondents and RICHEY to take affirmative action to correct the conditions
17 resulting from Respondents' acts, practices, or transactions, including a requirement to make
18 restitution pursuant to A.R.S. § 44-2032; and

19 3. Order Respondents and RICHEY to pay the state of Arizona administrative penalties
20 of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S.
21 § 44-2036; and

22 4. Order that the marital community of ROGAN and RICHEY be subject to any order
23 of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to
24 A.R.S. § 25-215; and

25 5. Order any other relief that the Commission deems appropriate.
26

1 **IX. HEARING OPPORTUNITY**

2 Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-
3 307. **If a respondent requests a hearing, the requesting respondent must also answer this**
4 **Temporary Order and Notice.** A request for hearing must be in writing and received by the
5 Commission within 20 days after service of this Temporary Order and Notice. The requesting
6 respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation
7 Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained
8 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
9 www.azcc.gov/divisions/hearings/docket.asp.

10 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10
11 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,
12 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary**
13 **Order shall remain effective from the date a hearing is requested until a decision is entered.**
14 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,
15 with written findings of fact and conclusions of law. A permanent Order may include ordering
16 restitution, assessing administrative penalties, or other action.

17 If a request for hearing is not timely made, the Division will request that the Commission
18 make permanent this Temporary Order, with written findings of fact and conclusions of law, which
19 may include ordering restitution, assessing administrative penalties, or other relief.

20 Persons with a disability may request a reasonable accommodation such as a sign language
21 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
22 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
23 Requests should be made as early as possible to allow time to arrange the accommodation.

24 **X. ANSWER REQUIREMENT**

25 Pursuant to A.A.C. R14-4-305, if a respondent requests a hearing, the requesting
26 respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control,

1 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30
2 calendar days after the date of service of this Temporary Order and Notice. Filing instructions
3 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
4 web site at www.azcc.gov/divisions/hearings/docket.asp.

5 Additionally, the answering respondent must serve the Answer upon the Division.
6 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
7 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
8 Arizona, 85007, addressed to William W. Black.

9 The Answer shall contain an admission or denial of each allegation in this Temporary
10 Order and Notice and the original signature of the answering respondent or the respondent's
11 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial
12 of an allegation. An allegation not denied shall be considered admitted.

13 When the answering respondent intends in good faith to deny only a part or a qualification
14 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
15 admit the remainder. Respondents waive any affirmative defense not raised in the Answer.

16 The officer presiding over the hearing may grant relief from the requirement to file an
17 Answer for good cause shown.

18 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 18th day of
19 February, 2009.



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21 Mark Dinell
22 Assistant Director of Securities
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